

EXHIBIT B-1

EXHIBIT B-1

Page 1

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF OHIO
4 WESTERN DIVISION

-----)

5 WALTER W. THIEMANN, et al.,
6 Plaintiffs,
7 vs.
8 OHSL FINANCIAL CORP., et al.,
9 Defendants.

-----)

10

11

12 DEPOSITION OF ROSS D. FUERMAN, Ph.D.
13 New York, New York
14 Thursday, October 21, 2004

15

16

17

18

19 Reported by:

Toni Allegrucci

20 JOB NO. 165883

21

22

23

24

25

	Page 2		Page 4
1		1	
2	October 21, 2004	2 APPEARANCES CONT'D:	
3	9:13 a.m.	3	
4		4 SCHROEDER MAUNDRELL BARBIERE & POWERS	
5	Deposition of ROSS D. FUERMAN,	5 Attorneys for Defendants	
6	Ph.D., taken on behalf of the Respected	6 DINSMORE & SHOHL AND ROE	
7	Parties, held at the offices of Esquire	7 11935 Manson Road Ste. 110	
8	Deposition Services, 216 East 45th	8 Cincinnati, Ohio 45249	
9	Street, New York, New York, pursuant to	9 BY: ROBERT S. HILLER, ESQ.	
10	Notice, before Toni Allegrucci, a Notary	10	
11	Public of the State of New York.	11	
12		12 ALSO PRESENT:	
13		13 JASON COHEN, ESQ., KMK, VIA TELEPHONE	
14		14	
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
	Page 3		Page 5
1		1	
2	APPEARANCES:	2 IT IS HEREBY STIPULATED AND AGREED	
3		3 by and between the attorneys for the	
4	GENE MESH & ASSOCIATES	4 respective parties herein, that filing,	
5	Attorneys for Plaintiffs	5 sealing and certification be and the	
6	2605 Burnet Avenue	6 same are hereby waived.	
7	Cincinnati, Ohio 45219	7	
8	BY: MICHAEL G. BRAUTIGAM, ESQ.	8 IT IS HEREBY STIPULATED AND AGREED	
9		9 that all objections, except as to the form	
10		10 of the question, shall be reserved to the time	
11	KEATING, MUETHING & KLEKAMP, PLL	11 of the trial.	
12	Attorneys for Defendants	12	
13	OHSL FINANCIAL CORP	13 IT IS FURTHER STIPULATED AND AGREED	
14	PROVIDENT	14 that the within deposition may be signed	
15	1400 Provident Tower	15 before any Notary Public with the same force	
16	One East Fourth Street	16 and effect as if signed and sworn to before	
17	Cincinnati, Ohio 45202	17 the Court.	
18	BY: JAMES E. BURKE, ESQ.	18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

2 (Pages 2 to 5)

<p>1 FUERMAN</p> <p>2 ROSS D. FUERMAN, called as a 3 witness, having been duly sworn by a Notary 4 Public, was examined and testified as follows:</p> <p>5 EXAMINATION BY</p> <p>6 MR. BURKE:</p> <p>7 Q. Good morning, Mr. Fuerman. We're 8 here to take your deposition in the case of 9 Walter Thiemann versus OHSL Financial Corp., 10 that's pending in the United States District 11 Court, for the Southern District of Ohio.</p> <p>12 Have you been deposed before?</p> <p>13 A. No, I have not.</p> <p>14 Q. I'm sure your counsel has told you 15 sort of the way it works, but I'll be asking 16 you questions here. You are under oath. If 17 at any time my questions are unclear, feel 18 free to ask for clarification.</p> <p>19 If you keep your voice up and answer 20 audibly that helps the Court Reporter. 21 Finally, I have a tendency to speak quickly. 22 I'll try to avoid interrupting you, and if you 23 wait for my question to be finished before you 24 answer the transcript will read that much 25 better.</p>	<p>Page 6</p>	<p>1 FUERMAN</p> <p>2 do any additional work, to the extent you have 3 done any additional work or come up with any 4 additional opinions other than what's 5 reflected in the filed report, I would ask 6 that you advise your counsel so he can tell 7 me. I want to understand before trial 8 precisely what you are going to testify to.</p> <p>9 A. Okay, yes.</p> <p>10 Q. So if anything else happens please 11 let him know because we'll probably want to 12 depose you about that, as well.</p> <p>13 MR. BRAUTIGAM: I just want to point 14 out that discovery is continuing. As I 15 pointed out, I personally received the 16 Chris Carey transcripts from California. 17 Dr. Fuerman has reviewed this.</p> <p>18 Dr. Fuerman continues to review discovery 19 transcripts as they are made available.</p> <p>20 MR. BURKE: That's fine.</p> <p>21 Q. All I ask you to do, as you do that 22 to the extent it affects your opinions, 23 changes your opinions, causes you to render 24 new opinions, that you advise Mr. Brautigam 25 and he can advise me so we can be aware of</p>	<p>Page 8</p>
<p>1 FUERMAN</p> <p>2 Finally, if at any time you want to 3 take a break just let me know and we'll 4 accommodate you. If you answer the questions 5 that I'm asking you I will assume that you 6 understood what I was asking.</p> <p>7 Any questions that you have of me?</p> <p>8 A. No. I think it's fairly clear.</p> <p>9 Q. All right. Do you prefer 10 Professor Fuerman, Mr. Fuerman, Dr. Fuerman, 11 let me know?</p> <p>12 A. Professor Fuerman will be fine.</p> <p>13 Q. That's fine. You have been 14 identified as an expert witness for the 15 plaintiffs in this case; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. We're here to take your deposition 18 and expert witness depositions are a little 19 bit different. I want to understand precisely 20 what you are going to testify to at trial. We 21 have the report that you previously issued, 22 dated August 8th of 2004.</p> <p>23 I assume, and if you don't tell me 24 to the contrary that that is everything you 25 are going to testify about, to the extent you</p>	<p>Page 7</p>	<p>1 FUERMAN</p> <p>2 that. All right?</p> <p>3 A. That makes sense.</p> <p>4 Q. Would you state your name and spell 5 your last name for the record, please.</p> <p>6 A. Ross D. Fuerman, that's 7 F-U-E-R-M-A-N.</p> <p>8 Q. What's your residence address?</p> <p>9 A. 19 Westgait, that's all one word, 10 Road, Newton, Massachusetts 02459.</p> <p>11 Q. What is your business address?</p> <p>12 A. It is a bit unusual in that I do my 13 research mostly from my home, but at the 14 university, I am at Suffolk University, that's 15 S-U-F-F-O-L-K, 8 Ashburton Place, Boston, 16 Massachusetts 02108. I'm in the Sawyer School 17 of Management.</p> <p>18 Q. What is your position there?</p> <p>19 A. Associate Professor of Accounting.</p> <p>20 Q. Describe for me what an "associate 21 professor" is?</p> <p>22 A. In academe among the tenured or the 23 tenured track faculty there are three levels 24 of professors. The beginning level is assistant. Then typically after six or seven</p>	<p>Page 9</p>

<p style="text-align: right;">Page 10</p> <p>1 FUERMAN</p> <p>2 years a person is considered to be promoted</p> <p>3 and tenured as an associate.</p> <p>4 I was promoted and tenured about a</p> <p>5 year and a half ago, so now I'm an associate.</p> <p>6 The next level is called full professor, and</p> <p>7 many professors never reach that level.</p> <p>8 Q. How does one go from being an</p> <p>9 associate professor to a full professor?</p> <p>10 A. I happen right now to be serving on</p> <p>11 the promotion tenure and review committee.</p> <p>12 That committee reviewed my work when I applied</p> <p>13 for tenure. They reviewed my teaching, the</p> <p>14 quality of my teaching based on student</p> <p>15 evaluations and other things.</p> <p>16 They evaluated my service to the</p> <p>17 school in helping to run the school and they</p> <p>18 evaluated my research. They require the</p> <p>19 professor publish a fair number of articles in</p> <p>20 referee journals. They consider all this and</p> <p>21 they considered my application and promoted me</p> <p>22 to associate professor.</p> <p>23 Q. You are in a tenured position now?</p> <p>24 A. That is correct.</p> <p>25 Q. My prior question, though, was more</p>	<p style="text-align: right;">Page 12</p> <p>1 FUERMAN</p> <p>2 A. That is correct.</p> <p>3 Q. Do you have an employment</p> <p>4 relationship with any other companies or</p> <p>5 entities at this time?</p> <p>6 A. No, I do not.</p> <p>7 MR. BURKE: Off the record.</p> <p>8 (Discussion off the record.)</p> <p>9 MR. BURKE: Let's mark this as</p> <p>10 deposition Exhibit 1.</p> <p>11 (Fuerman Exhibit 1, document, marked</p> <p>12 for identification, as of this date.)</p> <p>13 Q. Can you identify what I've marked as</p> <p>14 deposition Exhibit 1, Professor Fuerman.</p> <p>15 Fuerman, right?</p> <p>16 A. Fuerman, but I'm used to people</p> <p>17 mispronouncing it throughout my life. It's</p> <p>18 titled "Notice of Expert Deposition of</p> <p>19 Ross D. Fuerman.</p> <p>20 Q. This was transmitted to you by</p> <p>21 Mr. Brautigam in recent days?</p> <p>22 A. Right, I received it Monday.</p> <p>23 Q. And subsequent --</p> <p>24 A. By e-mail.</p> <p>25 Q. I'm sorry?</p>
<p style="text-align: right;">Page 11</p> <p>1 FUERMAN</p> <p>2 directed. How does one go from being an</p> <p>3 associate professor to a full professor, if</p> <p>4 you know?</p> <p>5 A. After however many years the</p> <p>6 applicant wants to wait the applicant</p> <p>7 professor fills out an application form and</p> <p>8 submits, again, a dossier of his or her</p> <p>9 teaching, research and service to the school</p> <p>10 and it is evaluated by the promotion and</p> <p>11 tenure committee.</p> <p>12 And it's then that recommendation is</p> <p>13 given to the dean of the school, the dean of</p> <p>14 the school then makes a recommendation to the</p> <p>15 president of the university, who makes a</p> <p>16 recommendation to the board of trustees and</p> <p>17 formally the board of trustees confers either</p> <p>18 a promotion or a tenure.</p> <p>19 Q. Have you ever applied for that?</p> <p>20 A. No, I have not. It would be fairly</p> <p>21 unusual for someone to apply so quickly after</p> <p>22 having been promoted to associate professor.</p> <p>23 Q. Other than I take it at</p> <p>24 Suffolk University, you were employed</p> <p>25 full-time by them?</p>	<p style="text-align: right;">Page 13</p> <p>1 FUERMAN</p> <p>2 A. By e-mail I received it Monday.</p> <p>3 Q. Subsequent to that Mr. Brautigam and</p> <p>4 I had some discussions of what we would be</p> <p>5 looking for, and we agreed we are not asking</p> <p>6 you to reproduce pleadings, depositions,</p> <p>7 things in the record, but just asking you to</p> <p>8 produce portions of your file that had not</p> <p>9 been produced previously.</p> <p>10 Did you understand that?</p> <p>11 A. Yes, and as a matter of practicality</p> <p>12 that's all I could fit into my briefcase to</p> <p>13 carry on the train.</p> <p>14 Q. Just in generally terms, you've</p> <p>15 brought with you today about eight ten-inches</p> <p>16 worth of documents. Can you generally</p> <p>17 describe what you've produced for us today.</p> <p>18 A. I've produced two sets of documents.</p> <p>19 The first set I gathered together gradually</p> <p>20 over the last few weeks. They are items that</p> <p>21 I cite in my expert report. Articles by other</p> <p>22 professors, accounting standards, things of</p> <p>23 that nature.</p> <p>24 The documents that I pulled together</p> <p>25 since receiving the Notice of the Expert</p>

<p>1 FUERMAN</p> <p>2 Deposition are items that you requested.</p> <p>3 Should we go through them one by one?</p> <p>4 Q. Sure. I think the first is your</p> <p>5 time sheets?</p> <p>6 A. Yes, that's my time sheets with Mesh</p> <p>7 and Associates. The second is a May 3, 2004</p> <p>8 memo that I wrote regarding the Joe Stager</p> <p>9 deposition. The next is correspondence from</p> <p>10 me to Mike Brautigam.</p> <p>11 After that is a correspondence from</p> <p>12 Mike Brautigam to myself. After that is the</p> <p>13 next to last draft of a document that was</p> <p>14 filed with the court January 22, 2004, a</p> <p>15 document that I wrote and signed. Then after</p> <p>16 that is a document -- have I missed something?</p> <p>17 There was also a draft of a document</p> <p>18 that was actually filed with the court</p> <p>19 March the 5th, 2004. That's a draft in here</p> <p>20 also. There's then two drafts of a document</p> <p>21 that was not filed with the court, but was</p> <p>22 given to you.</p> <p>23 The second to last draft of Expert</p> <p>24 Report of Ross D. Fuerman, August 2004. Next</p> <p>25 to last draft, this would have been the last</p>	<p>Page 14</p> <p>1 FUERMAN</p> <p>2 and March 27, 2002. I anticipated this might</p> <p>3 also come up during the deposition, so I gave</p> <p>4 you a copy.</p> <p>5 Q. The earnings per share figures that</p> <p>6 you summarize on the second page of the last</p> <p>7 document you talked about refer to 10 Ks filed</p> <p>8 in the periods starting March 30, 1999, for</p> <p>9 the years thereafter?</p> <p>10 A. No. Those are in the far left</p> <p>11 column, those are the filing dates. The 10 K</p> <p>12 filed 3/30/99 was for the fiscal year ending</p> <p>13 12/31/98. The 10 K filed 3/29/00 would be for</p> <p>14 the fiscal year ending 12/31/99 and so forth.</p> <p>15 Q. Okay. Thank you. We have</p> <p>16 previously marked in this case as</p> <p>17 Plaintiffs' 115 a copy of your report. I ask</p> <p>18 you to take a look at that and tell me if you</p> <p>19 can identify that or not?</p> <p>20 MR. BRAUTIGAM: Are you done with</p> <p>21 deposition Exhibit 1?.</p> <p>22 MR. BURKE: Yes.</p> <p>23 MR. BRAUTIGAM: In addition to being</p> <p>24 inappropriate and unnecessary. I believe</p> <p>25 that the document is intentionally</p>
<p>1 FUERMAN</p> <p>2 draft before the final document that was given</p> <p>3 to you, Expert Report of Ross D. Fuerman,</p> <p>4 dated August 7, 2004. And then I gave you</p> <p>5 these.</p> <p>6 I don't know that they have anything</p> <p>7 to do with anything. I just thought you might</p> <p>8 want to see my Business Week article.</p> <p>9 Q. I appreciate that. There was one</p> <p>10 final couple of pages that you also</p> <p>11 identified?</p> <p>12 A. Yes. The first page is from page 75</p> <p>13 of Provident 10 K, filed March 29, 2000. It</p> <p>14 is part of the notes to the consolidated</p> <p>15 financial statements. It's a pro forma</p> <p>16 footnote and I anticipate that this will come</p> <p>17 up during the deposition today so.</p> <p>18 That's why I thought I would give</p> <p>19 you a copy of it in advance. The other piece</p> <p>20 of paper is a printout of a short spreadsheet,</p> <p>21 with four rows and four columns, that shows</p> <p>22 what Provident reported as its earnings per</p> <p>23 share and net income for years 1998 and 1999,</p> <p>24 and how that varied in the 10 K filed</p> <p>25 March 30, '99, March 29, 2000, March 15, 2001</p>	<p>Page 15</p> <p>1 FUERMAN</p> <p>2 misleading, in that it attempts to</p> <p>3 suggest to the witness and anyone else</p> <p>4 that Mr. Grier and Mr. Burke are counsel</p> <p>5 only for the Provident defendants.</p> <p>6 That's incorrect.</p> <p>7 I pointed this out to them and</p> <p>8 apparently they are content to leave a</p> <p>9 false, misleading impression on the</p> <p>10 record.</p> <p>11 MR. BURKE: Mr. Brautigam, we talked</p> <p>12 about that and that's a silly objection,</p> <p>13 a silly point and nobody is misled.</p> <p>14 Q. Do you understand who I represent</p> <p>15 today Mr. Fuerman?</p> <p>16 A. To be frank, I'm not quite certain.</p> <p>17 I do know that there is a difference of</p> <p>18 opinion among the counsel as to who represents</p> <p>19 whom.</p> <p>20 Q. So you don't know who I represent</p> <p>21 today?</p> <p>22 A. I know that you represent</p> <p>23 defendants, but there have been issues raised</p> <p>24 as to exactly which defendants and whether</p> <p>25 it's proper that you represent certain</p>

<p style="text-align: right;">Page 18</p> <p>1 FUERMAN</p> <p>2 defendants, but not other defendants, and it 3 seems to involve conflict of interest. I'm 4 certainly not an expert in attempting to 5 understand those kinds of issues.</p> <p>6 Q. I will represent to you that I 7 represent the Provident and the OHSL 8 defendants, along with Mr. Grier and Mr. Cohen 9 who is on the phone with us. Can you accept 10 that?</p> <p>11 A. Yes.</p> <p>12 Q. You've not been asked to render any 13 kind of opinions on any of the issues you just 14 talked about, have you?</p> <p>15 A. No, I have not.</p> <p>16 Q. Okay. If at any time you believe 17 that you are confused as to who I represent or 18 anything like that, please feel free to ask 19 for clarification.</p> <p>20 A. Thank you.</p> <p>21 Q. All right. Plaintiffs' Exhibit 115, 22 which you have.</p> <p>23 A. Yes, I identified this. This 24 appears to be a copy of the August 8, 2004 25 expert report of Ross D. Fuerman, Ph.D. which</p>	<p style="text-align: right;">Page 20</p> <p>1 FUERMAN</p> <p>2 Chartered Accountants or something like that.</p> <p>3 Q. Let's start with your educational 4 history. Can you describe it for me.</p> <p>5 A. My high school?</p> <p>6 Q. You can start with your university.</p> <p>7 A. I went to the University of 8 Cincinnati as an undergrad, majored in 9 History. Went to Jewish Theological Seminary 10 in New York and got a Master's in History. 11 That's here in New York, at 122nd and 12 Broadway.</p> <p>13 Then I went to, after a period of a 14 couple years I believe it was, went to George 15 Washington University, the National Law Center 16 of George Washington University, and got a JD 17 in 1982. And then I came back to the 18 University of Cincinnati in September of 1991 19 and began a Ph.D. in accounting program, 20 defended my dissertation in May of '96 and 21 received my degree I believe it was June of 22 1996, Ph.D. in Accounting.</p> <p>23 Q. I'm sure it's in here, but what was 24 the title of your dissertation?</p> <p>25 A. I used to that have in my resume, I</p>
<p style="text-align: right;">Page 19</p> <p>1 FUERMAN</p> <p>2 I wrote.</p> <p>3 Q. Take a look at the last four pages 4 of that document. It's also entitled 5 Exhibit A.</p> <p>6 A. Correct.</p> <p>7 Q. What is that?</p> <p>8 A. That's a copy of my resume.</p> <p>9 Q. Is this accurate and complete as we 10 sit here today?</p> <p>11 A. Yes, in the sense that it's the 12 resume that I have been using for my faculty 13 documents that I submit to my university and 14 reflects everything that I think is important 15 about me as an accounting professor. The only 16 thing that is a little bit different is that 17 recently one of my article publications, which 18 is regarded here as forthcoming, in corporate 19 ownership and control has actually been 20 published, and with permission of that 21 publisher it was also published in a second 22 journal called IFCA something. I can't 23 remember the rest of it.</p> <p>24 Q. Do you know what that stands for?</p> <p>25 A. International Federation of</p>	<p style="text-align: right;">Page 21</p> <p>1 FUERMAN</p> <p>2 don't anymore. It was on the impact of the 3 Central Bank of Denver Decision on auditor 4 litigation. That's a Supreme Court decision, 5 April 19, 2004. That's regarded as a very 6 seminal decision in securities litigation.</p> <p>7 Q. It's a case that dealt with aiding 8 and abetting liability, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. I know it's difficult to boil it 11 down, but essentially what was the point of 12 your dissertation, the thesis of your 13 dissertation?</p> <p>14 MR. BRAUTIGAM: Objection.</p> <p>15 A. It showed some evidence that there 16 was a slight reduction in the frequency of 17 lawsuits where the auditor was named a 18 defendant for a short time after that 19 decision, but it was not -- did not seem to 20 be -- did not seem to have a permanent impact 21 on the rate of auditor litigation. That was 22 one of the main things.</p> <p>23 The other is that not only myself, 24 but a number of people, a number of accounting 25 professors, and law professors also, have</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 FUERMAN</p> <p>2 written papers where we document what 3 characteristics are positively or negatively 4 associated with the auditor being named a 5 defendant, in a private securities class 6 action. And I developed a new variable that 7 no other academic had come up with to that 8 point.</p> <p>9 Q. When you say things that are 10 positive and negative with respect to an 11 auditor being named in a litigation, positive 12 or negative as to whom or what?</p> <p>13 A. In a statistical sense. My method 14 in, and I have done this in many papers since, 15 and also in that dissertation, is to look at a 16 large sample of several hundred, in some cases 17 a thousand, private securities class actions 18 and identify using what's called logistic 19 regression, what things seem to be present a 20 lot if the auditor does get named a defendant 21 versus do not seem to be present if the 22 auditor gets named a defendant.</p> <p>23 This is something that a number of 24 accounting professors have been working on 25 because of the interest of the accounting</p>	<p style="text-align: right;">Page 24</p> <p>1 FUERMAN</p> <p>2 substantial accounting background actually 3 before I started my Ph.D. program.</p> <p>4 And in the course of studying for 5 the C.P.A. exam I was approached by the head 6 of the Columbus office of the Becker C.P.A. 7 Review Course who asked if I would be 8 interested in becoming a teacher for that 9 course, and I said yes. So that really is 10 where I began to develop an interest in 11 teaching accounting, and I've always been a 12 research oriented person.</p> <p>13 Q. Maybe that's a way to approach this. 14 I take it you went straight from the 15 University of Cincinnati to the 16 Jewish Theological Seminary?</p> <p>17 A. That is correct.</p> <p>18 Q. From there did you work following 19 your graduation from the Jewish Theological 20 Seminary?</p> <p>21 A. I worked. I had a couple of jobs. 22 First I worked at Georgetown Law School in the 23 placement office, some sort of really kind of 24 a clerical position. Then I worked as a 25 paralegal at Howard and Simon, a law firm on</p>
<p style="text-align: right;">Page 23</p> <p>1 FUERMAN</p> <p>2 industry and auditors in this which reflects 3 the interests of accounting professors.</p> <p>4 Q. When did you first take accounting 5 courses?</p> <p>6 A. At the University of Cincinnati as 7 an undergrad. I believe I just had one 8 quarter of accounting, not much.</p> <p>9 Q. Your Undergrad Degree was in 10 History?</p> <p>11 A. That's correct.</p> <p>12 Q. Your Master's Degree was in history?</p> <p>13 A. That's correct.</p> <p>14 Q. So the next time you undertook a 15 comprehensive study of accounting was when you 16 began your Ph.D. studies at the University of 17 Cincinnati?</p> <p>18 MR. BRAUTIGAM: Objection to "the 19 next time."</p> <p>20 A. Actually I omitted my courses that I 21 took at Franklin University in Columbus, Ohio. 22 While I was at the Ohio Division of Securities 23 I took evening courses at Franklin, enough to 24 sit for the Ohio C.P.A. exam. I took a lot of 25 courses there, and so I had a fairly</p>	<p style="text-align: right;">Page 25</p> <p>1 FUERMAN</p> <p>2 Pennsylvania Avenue, I think they've merged 3 with another firm by now, for perhaps six 4 months. And it was there that I developed my 5 interest in the process of litigation, the way 6 that the cases flow from District Court to 7 Appellate Court to Supreme Court, and 8 sometimes back began and around and around.</p> <p>9 I found that interesting, the whole 10 process. That has been probably a major 11 reason for the success of my research. I know 12 and understand that process so well.</p> <p>13 Q. Were you a litigation paralegal at 14 Howard and Simon?</p> <p>15 A. Yes.</p> <p>16 Q. What kind of things did you do?</p> <p>17 A. I worked gathering documents 18 together and categorizing them or analyzing 19 them in some way. I can't recall the details. 20 It had to do with a hospital that was accused 21 of anti-trust violations, and Howard and Simon 22 was defending that hospital. I believe that 23 was the gist of it.</p> <p>24 Q. I take it that after the employment 25 you've just described was when you entered the</p>

<p style="text-align: right;">Page 26</p> <p>1 FUERMAN</p> <p>2 George Washington University Law School?</p> <p>3 A. Yes, shortly after that. I think I</p> <p>4 did do a bit of traveling after that for</p> <p>5 perhaps a month and then I went to law school.</p> <p>6 Q. Were you a full-time law student?</p> <p>7 A. I was a full-time law student.</p> <p>8 Q. You obtained your degree in 1982?</p> <p>9 A. That's correct.</p> <p>10 Q. Following your recent of your law</p> <p>11 degree, where did you go, did you work again</p> <p>12 after that?</p> <p>13 A. I did. I worked for a short time</p> <p>14 at -- it was on Wall Street. I can't</p> <p>15 remember. It was an insurance brokerage firm,</p> <p>16 but it was just for a few months and it did</p> <p>17 not suit me.</p> <p>18 So I went back to Ohio where I'm</p> <p>19 from, and I'm trying to remember the exact</p> <p>20 sequence of events. Maybe I can refresh my</p> <p>21 memory from what I've got down here. At some</p> <p>22 point I met people who I discussed the idea of</p> <p>23 working at the Ohio Division of Securities.</p> <p>24 That sounded like an interesting thing to do</p> <p>25 and it could be a good way to proceed.</p>	<p style="text-align: right;">Page 28</p> <p>1 FUERMAN</p> <p>2 A. Enz, E-N-Z, Jones and LeGrand,</p> <p>3 capital L-E, capital G-R-A-N-D.</p> <p>4 Q. Where are they based?</p> <p>5 A. I think they've broken up, but they</p> <p>6 were based in Columbus. I think they at one</p> <p>7 point moved to Westerville, but I just have</p> <p>8 heard through the grapevine they've broken up.</p> <p>9 Q. All right. While you were at the</p> <p>10 Ohio Division Securities from '83 to '85,</p> <p>11 describe your duties?</p> <p>12 A. I was an examiner. Companies that</p> <p>13 were interested in doing securities operations</p> <p>14 in Ohio, that needed to get the permission of</p> <p>15 the Ohio divisions -- this is part of the</p> <p>16 merit review process -- would file papers</p> <p>17 asking for permission. They had to get the</p> <p>18 permission in some cases not only of the</p> <p>19 securities exchange commission, but also from</p> <p>20 us, not always.</p> <p>21 There are many exemptions, but</p> <p>22 sometimes they would be required and different</p> <p>23 people would review different securities</p> <p>24 offering applications. These could be</p> <p>25 secondary offerings or initial public</p>
<p style="text-align: right;">Page 27</p> <p>1 FUERMAN</p> <p>2 Q. Let me go back to George Washington.</p> <p>3 While you were there were you on the law</p> <p>4 review?</p> <p>5 A. No.</p> <p>6 Q. The moot court team?</p> <p>7 A. I was not. I don't know if it was a</p> <p>8 requirement, but many of us did participate in</p> <p>9 moot court classes or competitions of some</p> <p>10 sort. I do remember having participated in a</p> <p>11 bit of that.</p> <p>12 Q. Were you under the coif?</p> <p>13 A. No.</p> <p>14 Q. Where were you originally born in</p> <p>15 Ohio, where did you grow up?</p> <p>16 A. I was born in New Philadelphia, and</p> <p>17 we moved to Dover when I was six years old.</p> <p>18 Q. Approximately when did you begin</p> <p>19 working at the Ohio Division of Securities?</p> <p>20 A. Would have been 1983.</p> <p>21 Q. How long did you stay with them?</p> <p>22 A. A couple of years and then I took a</p> <p>23 position with, as an associate, with a small</p> <p>24 law firm called F-N-Jones and LeGrand.</p> <p>25 Q. Can you spell that?</p>	<p style="text-align: right;">Page 29</p> <p>1 FUERMAN</p> <p>2 offerings, stock offerings, limited</p> <p>3 partnership syndications of real estate, oil</p> <p>4 and gas. Syndications were very big at this</p> <p>5 time. This is before the tax reform of 1986.</p> <p>6 Q. What were the nature of the duties</p> <p>7 you were performing in this review process?</p> <p>8 A. We had lists of things we were</p> <p>9 supposed to examine, that were motivated by</p> <p>10 the desire for investor protection that we</p> <p>11 would not, in some cases, we would not permit,</p> <p>12 for example, a company to do a stock offering</p> <p>13 if their debt equity ratio was not good enough</p> <p>14 in our view, or if their return on assets</p> <p>15 wasn't good enough in our view.</p> <p>16 Or if we felt that it was a deal</p> <p>17 structured where the fees, the front end fees</p> <p>18 were too high and too much of the offering was</p> <p>19 going into fees, to the underwriter, the</p> <p>20 broker, the accountant, the securities</p> <p>21 transaction attorney, rather than into the</p> <p>22 substantive investment of the company that was</p> <p>23 raising the funds.</p> <p>24 Q. What was your title at the Ohio</p> <p>25 Division of Securities?</p>

<p style="text-align: right;">Page 30</p> <p>1 FUERMAN</p> <p>2 A. I think actually I have that right 3 here, which is good, financial institutions 4 examiner. That was my official title.</p> <p>5 Q. Did that indicate that you were 6 dealing primarily with financial institutions 7 or not?</p> <p>8 A. It does not. It really is a 9 misnomer. I reviewed the applications of all 10 kinds of securities offerings.</p> <p>11 Q. Were you at a junior level? Is this 12 an entry level position?</p> <p>13 A. It was an entry level position, yes.</p> <p>14 Q. In the course of your review there 15 are other people above you who were also 16 involved in that process?</p> <p>17 A. There were.</p> <p>18 Q. Who would you have been reporting 19 to?</p> <p>20 A. It was really a fairly thin 21 reporting structure. There was the assistant 22 commissioner and there was the commissioner 23 and that was really it. The assistant 24 commissioner I believe was Phil Lemcool at the 25 time and the commissioner was Roger Mardy.</p>	<p style="text-align: right;">Page 32</p> <p>1 FUERMAN</p> <p>2 they were a growing firm and they needed 3 people and they thought that I would add 4 something to their firm. So we talked and I 5 became an associate there.</p> <p>6 Q. What was the nature of their 7 practice?</p> <p>8 A. It was a general practice, just 9 about every kind of transaction or civil 10 litigation you could think of. They did no 11 criminal litigation at all, but they did civil 12 litigation, both plaintiffs and defendants. A 13 lot of securities syndication, limited 14 partnership transactions, tax return 15 preparation, tax consulting, tax advising, 16 probate, estate work, trust planning, wills.</p> <p>17 Q. How long did you stay with Enz Jones 18 and LeGrand?</p> <p>19 A. Two and a half years.</p> <p>20 Q. Which of the departments did you 21 practice in primarily?</p> <p>22 A. It was such a small firm we did not 23 have formal departments. There were only 24 three partners and perhaps four associates. I 25 worked with all three of the partners. I did</p>
<p style="text-align: right;">Page 31</p> <p>1 FUERMAN</p> <p>2 Q. While at the Ohio Division of 3 Securities, were you involved at all in the 4 enforcement side of things?</p> <p>5 A. Occasionally I would help out. We 6 would all be drafted from time to time to help 7 out in various tasks where they needed a lot 8 of people, but not very often.</p> <p>9 Q. Did you ever try any cases or 10 actually participate in litigation while at 11 the Ohio Division of Securities?</p> <p>12 A. No, not at all.</p> <p>13 Q. Your role in enforcement proceedings 14 would have been more of a behind the scenes 15 support role?</p> <p>16 A. Yes, and very trivially. We all 17 came into observe a securities fraud trial, at 18 least once, all the attorneys of the office, 19 but I had no substantive role in that.</p> <p>20 Q. Why did you choose to leave the Ohio 21 Division of Securities?</p> <p>22 A. I felt that it was a good offer that 23 was being made to me by Enz Jones and LeGrand. 24 I came to be friendly with those attorneys. 25 They had dealings with the Ohio division, and</p>	<p style="text-align: right;">Page 33</p> <p>1 FUERMAN</p> <p>2 a fair amount of securities litigation and 3 syndication and transaction work, forming 4 corporations, that kind of thing, with 5 David LeGrand, to a lesser extent with Steve 6 Enz. Civil litigation, especially insurance 7 defense work on behalf of nationwide with 8 Gray Jones.</p> <p>9 Q. During the two and a half years you 10 spent with this firm, how many cases did you 11 in fact try?</p> <p>12 A. I did not try a single case.</p> <p>13 Q. How many securities litigation cases 14 were you involved with?</p> <p>15 A. I was involved as a document creator 16 in many cases. I'm trying to remember how 17 many.</p> <p>18 Q. Just a rough order magnitude, if you 19 can remember?</p> <p>20 A. This would be a real wild guess, but 21 maybe 30 or 40. My job was a document person 22 really. I drafted Complaints, Answers, 23 replies, memos in support for motions of 24 summary judgment or for motions on the 25 pleadings. I assembled documents.</p>

<p style="text-align: right;">Page 34</p> <p>1 FUERMAN</p> <p>2 I remember one case in particular 3 where I had to spend a lot of time assembling 4 documents to try to build a case. It had to 5 do with intangible rights with proprietary 6 rights on photographs, or had to do something 7 with a dispute between a magazine publisher 8 and a printer.</p> <p>9 Q. During the time that you were 10 involved in the litigation process, did you 11 take any depositions during your time at 12 Enz LeGrand?</p> <p>13 A. I would sometimes sit in and told to 14 attend a deposition, but unless something 15 extreme were to happen I would not get 16 involved.</p> <p>17 Q. You don't recall taking any 18 depositions on your own?</p> <p>19 A. Not really. My role would have been 20 more or less just to observe that things went 21 reasonably in accord with the rules for which 22 the depositions are governed, but nothing 23 significant.</p> <p>24 Q. How about, did you argue any of the 25 motions you wrote?</p>	<p style="text-align: right;">Page 36</p> <p>1 FUERMAN</p> <p>2 with the technical aspects of my work.</p> <p>3 Q. When you went to 4 Cardinal Industries, tell me what you did?</p> <p>5 A. I specialized in writing many, many 6 real estate limited partnership syndications. 7 I wrote the syndication documents, I review 8 the projections. I would participate in the 9 legal research needed for them.</p> <p>10 I was a liaison with an outside law 11 firm that provided a tax opinion, and also 12 occasionally with a C.P.A. firm that would 13 provide what's called an examination of the 14 forecast. We rarely did forecast, we usually 15 did projections. We rarely had them opined on 16 by an outside C.P.A. firm.</p> <p>17 Q. What was the business of Cardinal 18 Industries?</p> <p>19 A. They had two, maybe three, depends 20 how you look at it, basic business. One is 21 they manufactured housing. They were a 22 pioneer in developing the whole concept of 23 modular housing, manufactured housing.</p> <p>24 And they had five factories in 25 different locations across the United States.</p>
<p style="text-align: right;">Page 35</p> <p>1 FUERMAN</p> <p>2 A. No.</p> <p>3 Q. Do you recall any of the cases on 4 which you worked actually going to trial?</p> <p>5 A. I don't remember any case actually 6 going to trial. It seemed like everything 7 settled. One case I remember had to do with 8 arbitration. There was a Supreme Court 9 holding that came out and suddenly made 10 arbitration clauses more strong in the 11 interpretation of the courts.</p> <p>12 I remember I wrote a lot of 13 documents for that. And I left the firm, I 14 was told after I left the firm the case 15 settled.</p> <p>16 Q. Why did you leave Enz Jones and 17 LeGrand after two and a half years?</p> <p>18 A. Well, it was by mutual agreement 19 with the firm. It was partly a matter of I 20 had a better opportunity with Cardinal 21 Industries and partly they felt I was not a 22 sufficient rainmaker.</p> <p>23 I was not bringing in the clients, 24 and that's a very important thing for a small 25 firm. I don't think they had any complaint</p>	<p style="text-align: right;">Page 37</p> <p>1 FUERMAN</p> <p>2 They also managed the properties that got 3 built. They managed apartment complexes, 4 Nights Inn, motels and a relatively smaller 5 number of what they called "Cardinal 6 retirement villages."</p> <p>7 This was the beginning of the adult 8 living community kind of thing that has become 9 very big today. Then the third thing was 10 really what I was mostly involved in, which 11 was the raising of equity capital via mostly 12 by private placement memoranda, real estate 13 limited partnerships, to fund these various 14 projects that got built. They would be 15 financed partly with those funds and partly 16 with bank loans.</p> <p>17 Q. In the course of your duties you 18 were writing or assisting in the preparation 19 and writing of the offering documents?</p> <p>20 A. That's correct.</p> <p>21 Q. To attract investors to Cardinal 22 projects?</p> <p>23 A. Well, as an attorney my job was to 24 protect the company from legal liability, not 25 to be a marketer, promoter. But there were</p>

<p style="text-align: right;">Page 38</p> <p>1 FUERMAN</p> <p>2 other people who collaborated on these 3 documents, whose role was along those lines. 4 And so the document really was a hybrid 5 between the two purposes.</p> <p>6 Q. Okay. You answered my question. 7 Were you in the legal department of 8 Cardinal Industries at this time or 9 functioning as a lawyer?</p> <p>10 A. I was and I wasn't. They had 11 shifting relationships within the groups at 12 Cardinal Industries. At one point I was very 13 clearly under the supervision of a manager by 14 the name of Bill Wolf who was in charge of the 15 syndications.</p> <p>16 He was a person really with a 17 management marketing kind of background, who 18 really knew nothing about law or accounting. 19 He had legal and accounting people like myself 20 who would help him produce the documents and 21 do what needed to be done.</p> <p>22 But there also was a general counsel 23 at Cardinal, Howard Spiece. As time went on I 24 began to develop a closer relationship with 25 him and his assistant general counsel, I think</p>	<p style="text-align: right;">Page 40</p> <p>1 FUERMAN</p> <p>2 two real estate investment trusts, and those 3 were public offerings, and those would have a 4 portfolio of projects in each one of them.</p> <p>5 Q. While you were at Cardinal 6 Industries, did you do any litigation?</p> <p>7 A. I think I may have from time to time 8 assisted the general counsel in some trivial 9 tasks related to litigation, but not 10 substantively, no.</p> <p>11 Q. It was not a primary focus of your 12 time?</p> <p>13 A. Not at all, not at all.</p> <p>14 Q. How long did you stay at Cardinal?</p> <p>15 A. I was there I think a year and a 16 half. Yeah, I think I was there a year and a 17 half.</p> <p>18 Q. Did your title or position change 19 during that year and a half?</p> <p>20 A. I don't think so. It was never 21 terribly clear what my title was to begin 22 with. Things were run fairly informally.</p> <p>23 Q. Why did you leave Cardinal?</p> <p>24 A. They went into Chapter 11. They had 25 some terrible financial difficulties brought</p>
<p style="text-align: right;">Page 39</p> <p>1 FUERMAN</p> <p>2 they may have even had one or two other 3 people, in doing the things that they would 4 do. So in time we were all working together I 5 think is the way it worked out.</p> <p>6 Q. Your job was sort of a combination 7 or a hybrid of a business position as well as 8 a legal position?</p> <p>9 A. Well, I saw myself as entirely a 10 legal and accounting position. At one point I 11 was under the supervision of a non-lawyer, 12 non-accountant Bill Wolf, but gradually I 13 became more and more under the supervision of 14 the general counsel. I think it involved 15 interoffice politics, which probably happens 16 at a lot of companies.</p> <p>17 Q. Were the syndications you were 18 preparing for Cardinal Industries project 19 specific?</p> <p>20 A. Yes.</p> <p>21 Q. Would they syndicate the rights to a 22 particular apartment complex or retirement 23 home?</p> <p>24 A. That's usually the way it went. The 25 exception to that was they did one or maybe</p>	<p style="text-align: right;">Page 41</p> <p>1 FUERMAN</p> <p>2 on in part by the tax reform act of 1986, 3 making it more difficult for them to raise the 4 funds they needed to continue their 5 syndications. They thought that they could 6 somehow adjust to that, but in time it caught 7 up with them.</p> <p>8 It was one of the largest Chapter 11 9 bankruptcies ever filed in the 10 Southern District of Ohio, in the Columbus 11 Division.</p> <p>12 Q. Was there litigation filed in 13 connection with any of the syndications that 14 you participated in?</p> <p>15 A. Not that I'm aware of. I would not 16 be surprised if when the company became 17 insolvent during the last few months before 18 filing for Chapter 11 that there may have been 19 such lawsuits, but I'm not aware of them. I 20 was told by somebody, I can't remember who, 21 there were 600 outstanding lawsuits against 22 the company. Things had gotten so bad.</p> <p>23 Q. Do you have any idea whether any of 24 those lawsuits you heard about secondhand were 25 securities litigation lawsuits against</p>

<p style="text-align: right;">Page 42</p> <p>1 FUERMAN</p> <p>2 Cardinal?</p> <p>3 A. Again, this is secondhand</p> <p>4 information at this point. I cannot even</p> <p>5 remember whether it was the general counsel,</p> <p>6 assistant general counsel or somebody else who</p> <p>7 commented, proudly, that there were lawyers</p> <p>8 that came in there attempting to see if they</p> <p>9 could develop a securities lawsuit and then</p> <p>10 when they got more information they backed off</p> <p>11 and they felt there was not a case to be made.</p> <p>12 Q. After you left Cardinal, where did</p> <p>13 you go?</p> <p>14 A. After that, I went to Schottenstein</p> <p>15 Stores Corporation, which could also simply be</p> <p>16 regarded as working for the Schottenstein</p> <p>17 family in Columbus. A friend of mine knew</p> <p>18 that I was distressed, that it looked like my</p> <p>19 job was going to come to an end. They were</p> <p>20 laying off large numbers of people every day,</p> <p>21 literally every day at Cardinal.</p> <p>22 He said look, I've heard that so and</p> <p>23 so needs a job, why don't you get in touch</p> <p>24 with them. I think you might be good for</p> <p>25 them, this might be a good fit.</p>	<p style="text-align: right;">Page 44</p> <p>1 FUERMAN</p> <p>2 teetering towards bankruptcy. They would</p> <p>3 frequently buy a 50 percent interest in these</p> <p>4 companies.</p> <p>5 They liked to do that rather than</p> <p>6 buy 100 percent interest for whatever reasons.</p> <p>7 So this mode of business created a need for</p> <p>8 some legal and financial people in-house and</p> <p>9 tax people to sort out the inevitable</p> <p>10 complexities that come from doing business</p> <p>11 this way. I was one of those people.</p> <p>12 I was corporate staff assistant I</p> <p>13 have written down here. You could also regard</p> <p>14 me as an assistant to the general counsel. I</p> <p>15 worked for various people there.</p> <p>16 Q. Who was the general counsel at</p> <p>17 Schottenstein?</p> <p>18 A. At that time Louise Grewin.</p> <p>19 Q. How long did you stay at</p> <p>20 Schottenstein?</p> <p>21 A. I was there for only six months.</p> <p>22 Q. Generally describe what you were</p> <p>23 doing, what you were personally doing during</p> <p>24 that six months period?</p> <p>25 A. A little bit of everything. They</p>
<p style="text-align: right;">Page 43</p> <p>1 FUERMAN</p> <p>2 Q. Were you hired by the stores or by</p> <p>3 the family, if you remember?</p> <p>4 A. I was really -- well, let me kind of</p> <p>5 explain the way it worked. It was very</p> <p>6 informal. The Schottenstein family is a very</p> <p>7 wealthy family in Columbus.</p> <p>8 Originally started out in just</p> <p>9 retail. They were big in retailing. They've</p> <p>10 been big in retailing for the last hundred</p> <p>11 years.</p> <p>12 They gradually began to develop</p> <p>13 other kinds of businesses, probably the</p> <p>14 biggest being, in addition to retailing, is</p> <p>15 they would go around the country to</p> <p>16 bankruptcies and they would buy inventory at</p> <p>17 bankruptcy auctions, and then they would make</p> <p>18 deals to resell the inventory either through</p> <p>19 their own stores, through other peoples</p> <p>20 stores.</p> <p>21 And they always were very shrewd</p> <p>22 business people. They would always be on the</p> <p>23 lookout for distressed businesses that they</p> <p>24 felt they wanted to acquire, either companies</p> <p>25 that were already in bankruptcy or that were</p>	<p style="text-align: right;">Page 45</p> <p>1 FUERMAN</p> <p>2 were constantly racing around from</p> <p>3 transaction, transaction. They would do</p> <p>4 things, like they would purchase a company or</p> <p>5 buy a 50 percent interest in a company that</p> <p>6 was in bankruptcy and then they would enter</p> <p>7 into negotiation.</p> <p>8 If this was a retailing company they</p> <p>9 bought, which more often than not was the</p> <p>10 case, there would be the issue of the</p> <p>11 outstanding leases that this company had in</p> <p>12 shopping malls around the country, and in</p> <p>13 bankruptcy a company has the right to rescind</p> <p>14 those. So there's a matter of negotiation</p> <p>15 between the landlord and the tenant at that</p> <p>16 point as to what's going to happen, so I would</p> <p>17 be involved in that. I would be involved in</p> <p>18 purchases of real estate, in factoring.</p> <p>19 I remember they had dealings with</p> <p>20 CIT Corporation. They were a big factor at</p> <p>21 the time. There were just many miscellaneous</p> <p>22 things that came up. Things like purchasing</p> <p>23 goods from outside the United States and</p> <p>24 customs duties and factors of credit that</p> <p>25 needed to be made available because when you</p>

<p style="text-align: right;">Page 46</p> <p>1 FUERMAN</p> <p>2 are doing an international transaction that's 3 very important, more so than domestic.</p> <p>4 Just so many things. I can't 5 remember them all. I left there because it 6 really was not what I wanted and I had been 7 doing some thinking ever since the Cardinal 8 Industries started to go downhill of making a 9 change in my career direction.</p> <p>10 As I said sometime before, I very 11 much enjoyed teaching at the Becker C.P.A. 12 review course. I've always enjoyed 13 researching. I felt I wasn't getting any 14 researching done at Schottenstein's, and it 15 was a very fast paced kind of business that 16 had to be done almost on the fly.</p> <p>17 My wife is a faculty brat. My 18 father-in-law taught music theory at Miami for 19 38 years and she has other relatives and 20 friends in academe. I knew nothing about 21 this, but she said I think this is something 22 you should consider.</p> <p>23 We talked about it, and I knew from 24 her and from other people that accounting was 25 an attractive field of academe to go into. I</p>	<p style="text-align: right;">Page 48</p> <p>1 FUERMAN</p> <p>2 people outside the legal function as within 3 the legal function.</p> <p>4 Q. And you indicated that a lot of work 5 you were doing was in sort of a general 6 corporate and real estate area?</p> <p>7 A. Yes.</p> <p>8 Q. Did you do any litigation or 9 oversight of litigation while at 10 Schottenstein?</p> <p>11 A. Actually now that you mention that I 12 was involved with one case. Now, I did not do 13 much. It was mostly helping to sort and 14 locate and analyze some documents for 15 litigation.</p> <p>16 Actually I had made one trip to 17 Boston. We engaged Hall and Door as outside 18 counsel. It had to do with alleged fraudulent 19 conveyance of the Wiebolts Store in Chicago.</p> <p>20 This was one of many situations 21 where Schottenstein's went in, bought a 22 company out of bankruptcy and I cannot recall 23 the details other than it involved alleged 24 fraudulent conveyance. So I helped to defend 25 the company against those charges.</p>
<p style="text-align: right;">Page 47</p> <p>1 FUERMAN</p> <p>2 spoke -- I had lunch and met Dean Jensen who 3 at the time I believe was head of the Ph.D. in 4 Accounting program at Ohio State University in 5 Columbus. We talked and I concluded this was 6 something that I wanted to do.</p> <p>7 I began to prepare myself by -- one 8 of the things I found out by talking with a 9 number of people is that my calculus 10 background was insufficient. So I began to 11 take some calculus courses to improve on that, 12 and then I began making applications to 13 schools.</p> <p>14 I was accepted at several schools. 15 I chose Cincinnati because my wife's family is 16 in Oxford, and it was nice having the 17 grandparents nearby while we lived in Oxford 18 for six years.</p> <p>19 Q. When you were working at the 20 Schottenstein firm, the Schottenstein group 21 we'll call it, were you in more of a legal 22 function, an accounting function, a tax 23 function; how would you describe it?</p> <p>24 A. I would describe it mostly as a 25 legal function, but interfacing as much with</p>	<p style="text-align: right;">Page 49</p> <p>1 FUERMAN</p> <p>2 Q. Were you taking an in-court role or 3 sort of a support role at the company?</p> <p>4 A. No, just a support role.</p> <p>5 Q. I take it after you applied to the 6 University of Cincinnati and were accepted, 7 from there on your career was in an academic 8 mode, first at the University of Cincinnati, 9 later at Suffolk; is that correct?</p> <p>10 A. That's pretty much true. I have 11 occasionally done some tax return work. I did 12 one fraud audit. This was during the process 13 of my studying to become a certified fraud 14 examiner.</p> <p>15 But pretty much I focused almost 16 entirely until very recently on teaching, 17 research and service to the university because 18 it's difficult to obtain tenure if you don't 19 really focus like that.</p> <p>20 Q. Let's go back and I want to deal a 21 little bit with your professional training. 22 You had indicated that you began to take 23 accounting courses while you were working at 24 the Ohio Division of Securities?</p> <p>25 A. That's right.</p>

<p style="text-align: right;">Page 50</p> <p>1 FUERMAN</p> <p>2 Q. How many years did you take 3 accounting courses at that time?</p> <p>4 A. Well, the courses probably stretched 5 beyond the time when I was at the Ohio 6 Division of Securities. I may have started to 7 study before. I know I certainly continued 8 after. Two years probably, I'm guessing, 9 maybe three. Probably two years is more.</p> <p>10 Q. What was the name of the 11 institution?</p> <p>12 A. Franklin University.</p> <p>13 Q. Is that a four year institution?</p> <p>14 A. It's a four year institution. They 15 may have some Master Degrees also. It's in 16 Columbus Ohio.</p> <p>17 Q. Did you obtain any degree from 18 Franklin University?</p> <p>19 A. I did not. At that time I already 20 had enough I felt.</p> <p>21 Q. You became -- you were at the Ohio 22 Division of Securities from '83 to '85; is 23 that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Did you indicate you sat for the</p>	<p style="text-align: right;">Page 52</p> <p>1 FUERMAN</p> <p>2 took one course there. That was shortly 3 before I started my Ph.D. program or maybe 4 right at the beginning of it. I was living 5 right there in Oxford, so it was convenient.</p> <p>6 Q. Is your C.P.A. license still active?</p> <p>7 A. Yes, it is.</p> <p>8 Q. And what states are you licensed in?</p> <p>9 A. Only in Ohio.</p> <p>10 Q. What about your bar admissions, 11 where are you admitted?</p> <p>12 A. I'm admitted in Ohio and the 13 District of Columbia, but I am not actively 14 licensed to practice because I let my -- I did 15 not continue meeting my CPE requirements each 16 year.</p> <p>17 Q. When did your license to practice 18 cease to be active in those two states if you 19 remember?</p> <p>20 MR. BRAUTIGAM: License to practice 21 law?</p> <p>22 MR. BURKE: Yes.</p> <p>23 A. Oh, ten years ago I'm guessing.</p> <p>24 Q. So around the time you became a 25 participant at the Ph.D. program at the</p>
<p style="text-align: right;">Page 51</p> <p>1 FUERMAN</p> <p>2 C.P.A. exam during that time?</p> <p>3 A. I sat after I finished my accounting 4 courses, probably around '86.</p> <p>5 Q. And what was the result?</p> <p>6 A. I passed.</p> <p>7 Q. All three parts?</p> <p>8 A. All four parts. Not in one fell 9 swoop. I did not even attempt to do them all 10 in one fell swoop. I did them in stages. We 11 were permitted in Ohio to do that.</p> <p>12 Q. When did you finally pass all four 13 parts?</p> <p>14 A. It may have been '86, may have been 15 '87. I can't remember. I do know that I got 16 the certificate in '87.</p> <p>17 Q. That's what I was going to mention 18 to you. Your resume says you became a C.P.A. 19 in '87. I didn't know if that's correct or 20 not. Did you continue to take accounting 21 courses after you left the Ohio Division of 22 Securities and worked at Enz Jones LeGrand?</p> <p>23 A. I did take one course at Miami 24 University in what's called advanced 25 accounting. That includes consolidations. I</p>	<p style="text-align: right;">Page 53</p> <p>1 FUERMAN</p> <p>2 Univeristy of Cincinnati is when you let your 3 bar admissions become inactive?</p> <p>4 A. Right, something like that.</p> <p>5 Q. Tell me about the kinds of things 6 you did as a professor or assistant professor 7 while you were getting your Ph.D. at the 8 University of Cincinnati?</p> <p>9 MR. BRAUTIGAM: Objection. Question 10 makes no sense.</p> <p>11 MR. BURKE: Let me rephrase that.</p> <p>12 Q. During the time you were acquiring 13 your Ph.D. at the University of Cincinnati in 14 accounting, did you also do some TA work?</p> <p>15 A. Yes, I did. After a couple years in 16 the program all the grad students who teach 17 entry level financial accounting and entry 18 level managerial accounting, we typically 19 would have three sections of 72 students 20 each -- usually you would teach financial 21 accounting in the fall and maybe in the winter 22 and then managerial in the spring.</p> <p>23 I'm trying to remember how they 24 worked it there. Cincinnati at the time, I 25 don't know if they still are, at the time they</p>

<p style="text-align: right;">Page 54</p> <p>1 FUERMAN</p> <p>2 were on a quarter system. I can't remember 3 exactly when the courses were, but I taught a 4 lot of entry level financial accounting to 5 undergrads and managerial accounting to 6 undergrads, mostly sophomores.</p> <p>7 Q. Did you have a specialty in 8 accounting when you obtained your Ph.D., was 9 there any area of focused?</p> <p>10 A. Yes. It's the area I focused my 11 dissertation on. It comes back to me also. I 12 requested and they gave me permission also 13 while I was a grad student to teach auditing.</p> <p>14 So I actually taught auditing for a 15 couple of years before becoming an assistant 16 professor. I wanted to get experience 17 teaching that before I became an assistant 18 professor, so I could develop my teaching 19 skills better.</p> <p>20 Q. How did you come to go from the 21 University of Cincinnati to Suffolk?</p> <p>22 A. I submitted my resume to a number of 23 different colleges and universities across the 24 United States, focusing on schools looked most 25 interesting, City's that looked like the most</p>	<p style="text-align: right;">Page 56</p> <p>1 FUERMAN</p> <p>2 Q. Did you apply for a position, a 3 full-time position at UC after you obtained 4 your Ph.D.?</p> <p>5 A. I did in the sense of I applied for 6 an instructor position for one year and I was 7 given a one-year instructor position.</p> <p>8 Q. You didn't apply for a faculty 9 position at UC?</p> <p>10 A. No, I was not encouraged to do so. 11 It on occasion has happened that Ph.D. 12 students do become a member of the faculty, a 13 real professor at that institution, but it's 14 very unusual.</p> <p>15 Q. So when you say you were not 16 encouraged, who did not encourage you to do 17 that?</p> <p>18 A. Nobody in particular encouraged me, 19 but I knew just from talking with people. And 20 the whole history of the UC Ph.D. program, 21 there's only one person who ever went through 22 the Ph.D. program and was asked to become a 23 professor there out of all the people. She 24 was my dissertation advisor.</p> <p>25 Q. The three offers that were made to</p>
<p style="text-align: right;">Page 55</p> <p>1 FUERMAN</p> <p>2 interesting places to live. And some schools 3 would respond favorably or not, some schools 4 would interview me at the national meeting 5 that was held each August.</p> <p>6 A smaller number of schools would 7 invite me to visit their campus, make a 8 presentation and meet the people. Then a 9 still smaller number made an offer to me.</p> <p>10 There were three schools that made an offer 11 and Suffolk was one of them.</p> <p>12 Q. When were those three offers made to 13 you?</p> <p>14 A. In I think it was the spring of 1996 15 was one offer, but I didn't feel it was all 16 that attractive. Then two more offers came in 17 December of '96.</p> <p>18 Q. When did you complete your 19 dissertation and receive your Ph.D. from UC?</p> <p>20 MR. BRAUTIGAM: Objection, asked and 21 answered.</p> <p>22 Q. You can answer.</p> <p>23 A. I defended the dissertation May of 24 '96, marched in the commencement ceremony June 25 of '96.</p>	<p style="text-align: right;">Page 57</p> <p>1 FUERMAN</p> <p>2 you, one was from Suffolk?</p> <p>3 A. That's correct.</p> <p>4 Q. Where were the other two?</p> <p>5 A. University of Wisconsin Greenbay.</p> <p>6 Q. Okay.</p> <p>7 A. And Cleveland State University.</p> <p>8 Q. You began to work at Suffolk in 9 1997?</p> <p>10 A. That's correct, September of '97.</p> <p>11 Q. Just generally trace for me the 12 evolution of your career at Suffolk.</p> <p>13 MR. HILLER: Jim, can I interrupt.</p> <p>14 You asked him a little while ago what 15 area of study he dealt with in his Ph.D. 16 and that reminded him that he taught 17 auditing and told us about that, but I 18 don't think he really answered your 19 question.</p> <p>20 Q. Was there a focus of your Ph.D. 21 training, did you have a particular area of 22 academic concentration?</p> <p>23 A. Yes. Like all the students there, 24 after you do your course work you -- let me 25 back up. When you are doing your course work</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 FUERMAN</p> <p>2 you can tailor your course work a little bit 3 to what you intend to do your Ph.D. on, but 4 not that much. Then once you finished your 5 course work and passed your comprehensive 6 exam, then you study just for the purpose of 7 being knowledgeable enough to write your 8 dissertation.</p> <p>9 By that time, of course, I had 10 decided that my natural niche was to write on 11 the role of auditors in litigation. So I read 12 everything I could possibly get my hands on on 13 that subject.</p> <p>14 Q. That also was the focus of your 15 dissertation?</p> <p>16 A. That was, yes.</p> <p>17 Q. So you would identify the role of 18 auditors in litigation as the area of academic 19 focus during your Ph.D. career at University 20 of Cincinnati; is that fair?</p> <p>21 A. That's correct.</p> <p>22 MR. BURKE: Let's take five minutes 23 and then we'll come back.</p> <p>24 (Recess taken.)</p> <p>25 (Record read.)</p>	<p style="text-align: right;">Page 60</p> <p>1 FUERMAN</p> <p>2 November, December of '96 there was a group of 3 Stanford law professors that showed how that 4 is associated in general with companies being 5 named, companies and officers and directors, 6 being named defendants in the securities 7 lawsuits also.</p> <p>8 They had a slightly different 9 approach, but they showed that. Subsequently 10 that has become a big thing that has been 11 cited in a number of papers. At that time 12 restatements were not that interesting I don't 13 think to people.</p> <p>14 Q. Which time are you talking about?</p> <p>15 A. In 1996. But they became I think 16 much more interesting as a result of 17 Lynn Turner talking about restatements, I 18 can't remember if it was '98 or '99. He gave 19 a speech and he talked about restatements.</p> <p>20 Then that generated interest in 21 other people in doing research on this and 22 then, of course, there's been the general 23 accounting office study on restatements 24 pursuant to Sarbanes-Oxley Act. So I cranked 25 out these various research papers, got them</p>
<p style="text-align: right;">Page 59</p> <p>1 FUERMAN</p> <p>2 Q. I think before we clarified that, 3 one of the things I was asking just in a 4 summary fashion is tell me about your career 5 at Suffolk, what you've done, what you've 6 focused in and what you've taught?</p> <p>7 A. I've continued to research this 8 topic using different variables to determine 9 what characteristics are generally present if 10 the auditor gets named a defendant, what 11 characteristics are not. That seems like a 12 very simple thing, but I've created half a 13 dozen published research papers on that doing 14 it in different ways, looking at different 15 time periods, different contexts, different 16 variables.</p> <p>17 The unique variable that I came up 18 with before anybody else, undisputed, I was 19 the first to demonstrate that the restatement 20 of previously issued audited annual financial 21 statements is strongly positively associated 22 with the auditor subsequently being named a 23 defendant in a private securities class 24 action. That was in my dissertation which I 25 defended in May of '96. Then I saw around</p>	<p style="text-align: right;">Page 61</p> <p>1 FUERMAN</p> <p>2 published in a variety of journals because, 3 well, for two reasons.</p> <p>4 One, I needed to do that to get 5 tenured, but I love research. If I had any 6 one thing that I was allowed to do all the 7 time every day, that's what I would do. I 8 can't, I have to also teach my students and do 9 service to the university.</p> <p>10 So far as teaching at the 11 university, mostly I have been teaching entry 12 level financial accounting and auditing. The 13 entry level financial accounting is for 14 sophomores who are just in any area of 15 business.</p> <p>16 All the business students, 17 regardless of what they are going to major in, 18 have to take that course, much to their 19 chagrin I think after my last midterm that I 20 gave them. But it's one of the courses that I 21 teach. Also, I teach auditing both to 22 undergrads, mostly seniors who are majoring in 23 accounting, and also I teach a separate course 24 to Master students in auditing.</p> <p>25 Most of those people are studying</p>

<p style="text-align: right;">Page 62</p> <p>1 FUERMAN</p> <p>2 for a Master in Science and Accountancy,</p> <p>3 although some of them are going for an MBA or</p> <p>4 a graduate diploma in Professional</p> <p>5 Accountancy, which people call a GDPA. Then</p> <p>6 the third course -- actually I did teach</p> <p>7 managerial accounting once several years ago</p> <p>8 at Suffolk, but that was it. It's not my</p> <p>9 favorite thing.</p> <p>10 Q. What is "managerial accounting"?</p> <p>11 A. "Managerial accounting" is the kind</p> <p>12 of accounting that is used internally by</p> <p>13 companies, so as to run the company more</p> <p>14 efficiently and profitably. It's not</p> <p>15 information that is released to the outside</p> <p>16 investors. That's what financial accounting</p> <p>17 is.</p> <p>18 Around '98 or '99 I began to discuss</p> <p>19 with the head of our accounting department at</p> <p>20 Suffolk his idea that, what he called forensic</p> <p>21 accounting, was a real up and coming thing and</p> <p>22 that our department ought to develop a course</p> <p>23 in that. We talked about it and first I</p> <p>24 resisted, I didn't want to take time away from</p> <p>25 my research, but as I thought about it and</p>	<p style="text-align: right;">Page 64</p> <p>1 FUERMAN</p> <p>2 not really areas that I'm in or that I teach</p> <p>3 at Suffolk.</p> <p>4 Q. Okay. You said that you base your</p> <p>5 course on the approach taken by Joseph Wells?</p> <p>6 A. Correct.</p> <p>7 Q. How do you define "forensic</p> <p>8 accounting"? You may have told me, but I</p> <p>9 missed it.</p> <p>10 A. I think of it as fraud examination,</p> <p>11 and that's the title that my course uses now</p> <p>12 for the last two years. And that's the title</p> <p>13 of the textbook I use by Steve Albrecht.</p> <p>14 Q. When did Mr. Wells, if you know,</p> <p>15 found the Association of Certified Fraud</p> <p>16 Examiners?</p> <p>17 A. 1988.</p> <p>18 Q. At some point you became a certified</p> <p>19 fraud examiner?</p> <p>20 A. That's correct.</p> <p>21 Q. When was that?</p> <p>22 A. Would have been 1999.</p> <p>23 Q. Tell me if you would what you had to</p> <p>24 do to become that?</p> <p>25 A. I had to go through a course of</p>
<p style="text-align: right;">Page 63</p> <p>1 FUERMAN</p> <p>2 learned more about it I became intrigued by</p> <p>3 the topic, because it fits my background so</p> <p>4 well.</p> <p>5 It's in many ways it is a</p> <p>6 cross-disciplinary topic. Especially the way</p> <p>7 I teach it, where you have the disciplines of</p> <p>8 accounting and auditing and criminal law and</p> <p>9 criminal justice and criminology all involved</p> <p>10 in this course. When people use the phrase</p> <p>11 "forensic accounting" there are two meanings.</p> <p>12 The meaning that I usually use is</p> <p>13 conveyed by fraud, the title "fraud</p> <p>14 examination." That's how I've renamed my</p> <p>15 course starting a couple years ago. It is the</p> <p>16 approach taken by Joseph Wells who founded the</p> <p>17 Association of Certified Fraud Examiners to</p> <p>18 focus on the disciplines I've talked about.</p> <p>19 Some people when they use the phrase</p> <p>20 "forensic accounting," they include additional</p> <p>21 things, such as business valuation, in</p> <p>22 divorces and other kinds of disputes.</p> <p>23 Computation of economic damages, for example,</p> <p>24 which I know there have been experts engaged</p> <p>25 in this case for that topic. But those are</p>	<p style="text-align: right;">Page 65</p> <p>1 FUERMAN</p> <p>2 study and then pass an exam and submit</p> <p>3 evidence that I had substantial experience</p> <p>4 that would entitle me to call myself a</p> <p>5 certified fraud examiner. Experience in</p> <p>6 pretty much the things that I'm experienced</p> <p>7 in; accounting, auditing, law, some</p> <p>8 involvement in fraud investigations, broadly</p> <p>9 interpreted through the division of securities</p> <p>10 at a private law firm, having performed a</p> <p>11 fraud audit.</p> <p>12 Q. You performed one fraud audit?</p> <p>13 A. I did perform one fraud audit.</p> <p>14 Q. When was that?</p> <p>15 A. That was in, I think it was in 1999.</p> <p>16 It was shortly before I became a certified</p> <p>17 fraud examiner.</p> <p>18 Q. Assuming you are at liberty to</p> <p>19 discuss that, what did that involve?</p> <p>20 A. It involved going through the books</p> <p>21 and records and documents of a company, in a</p> <p>22 town in Ohio, that according to the classic</p> <p>23 profile of fraud could have possibly</p> <p>24 experienced fraud. Because the owners were</p> <p>25 not heavily involved in the business and so,</p>

<p style="text-align: right;">Page 66</p> <p>1 FUERMAN</p> <p>2 therefore, the manager and the bookkeeper were 3 not extensively supervised. People would call 4 this a weak internal control situation. So I 5 went and I examined the books and the records.</p> <p>6 The cancelled checks, the checkbook 7 registers and I did various investigations, 8 looked at things and I found no evidence of 9 fraud that came to my attention. That's when 10 I wrote my report.</p> <p>11 Q. Who hired you?</p> <p>12 A. The partners of this business.</p> <p>13 Q. What was the name of the business?</p> <p>14 A. Monroe Associates.</p> <p>15 Q. They are based where?</p> <p>16 A. Well, I don't want to say.</p> <p>17 Q. Okay. You looked at some books, 18 checks, check registers and concluded there 19 was no fraud?</p> <p>20 A. Right.</p> <p>21 Q. How long did this take you?</p> <p>22 A. Several weeks.</p> <p>23 Q. That's the sum total of your fraud 24 examination experience as we sit here today?</p> <p>25 A. That's the sum total of my having</p>	<p style="text-align: right;">Page 68</p> <p>1 FUERMAN</p> <p>2 A. No.</p> <p>3 Q. I take it you did not in the course 4 of your duties for this case perform any fraud 5 exam?</p> <p>6 A. Not in the sense of a formal fraud 7 examination, however, I brought my knowledge 8 and experience to bear when reading and 9 interpreting the materials that I reviewed for 10 this course.</p> <p>11 Q. But my question is the first one you 12 answered, which is did you perform a formal 13 fraud exam in accordance with whatever the 14 standards and practices are of the certified 15 fraud examiner designation for purposes of 16 this case?</p> <p>17 MR. BRAUTIGAM: Objection.</p> <p>18 Q. Do you understand that?</p> <p>19 A. I believe that the opinions I've 20 rendered that might be regarded as being 21 related to fraud examination and certified 22 fraud examiners are within the parameters of 23 the things -- of the kind of opinions that 24 certified fraud examiners are entitled to 25 give.</p>
<p style="text-align: right;">Page 67</p> <p>1 FUERMAN</p> <p>2 performed fraud audits, yes.</p> <p>3 Q. You indicated that to become a 4 certified fraud examiner there was a course of 5 study?</p> <p>6 A. That is correct.</p> <p>7 Q. How long did that take you?</p> <p>8 A. It took me several months.</p> <p>9 Q. Was it computer correspondence or 10 did you attend classes?</p> <p>11 A. I did not attend physical classes.</p> <p>12 It was on a CD Rom that I purchased from the 13 Association of Certified Fraud Examiners.</p> <p>14 Q. Then you took an exam?</p> <p>15 A. That is correct.</p> <p>16 Q. Was that also on line or on a CD 17 Rom?</p> <p>18 A. That was on a separate compact disc 19 or maybe it was a floppy disc, a special 20 device, to assure that the person taking it 21 only has a limited amount of time to answer 22 each question.</p> <p>23 Q. Following -- have you been hired to 24 perform a fraud exam since the Monroe 25 situation?</p>	<p style="text-align: right;">Page 69</p> <p>1 FUERMAN</p> <p>2 Q. Maybe I'm misusing terms. You 3 talked earlier and I think you defined your 4 retention for the Monroe Company or Monroe 5 Associates as a "fraud audit"?</p> <p>6 A. Right. It was to look to see if any 7 fraud had occurred. There was no suggestion 8 that fraud had occurred, but just as a 9 prophylactic some businesses like to 10 periodically have a C.P.A. or a certified 11 fraud examiner come in and conduct such a 12 study.</p> <p>13 Q. Is "fraud auditing" a defined term 14 among certified fraud examiners?</p> <p>15 A. Yes. I mean my understanding is -- 16 I have to back up. There are some variations 17 in the jargon that's used in the field. ! 18 just mentioned earlier that some people refer 19 to the field as forensic accounting and others 20 call it fraud examination.</p> <p>21 Generally a fraud audit is formally 22 known as a situation where a certified fraud 23 examiner, for example, is brought in as a 24 prophylactic to investigate a business or 25 situation where there's no allegation of fraud</p>

<p style="text-align: right;">Page 70</p> <p>1 FUERMAN</p> <p>2 that has occurred. A fraud investigation is 3 more typically thought of as, for example, 4 when the Lernout and Hauspie scandal broke.</p> <p>5 I was told that KPMG is the auditor 6 there. Arthur Anderson's Boston office was 7 sent in to perform a fraud examination or a 8 forensic accounting engagement, however you 9 want to term it. Usually fraud examination is 10 more in terms of when there's allegations of 11 fraud, and at the point when they were brought 12 in allegations of fraud had been made.</p> <p>13 Q. So "fraud examination" would also be 14 a defined term among certified fraud 15 examiners; is that right?</p> <p>16 A. I think so, yes.</p> <p>17 Q. You told me about a fraud audit.</p> <p>18 A. Well, if I could interrupt, I'm 19 sorry. Fraud examination has at least two, 20 maybe three meanings among people in the 21 field. One is, it's an area of knowledge and 22 expertise.</p> <p>23 Another is that it's a particular 24 kind of engagement. When I use the term 25 "fraud examination" for my course at</p>	<p style="text-align: right;">Page 72</p> <p>1 FUERMAN</p> <p>2 Q. Have you ever --</p> <p>3 A. Other than my opinion after 4 completing the fraud audit.</p> <p>5 Q. I'm talking about the audit of 6 financial statements?</p> <p>7 A. That's correct.</p> <p>8 Q. So you've never signed off on an 9 audit opinion, whether it be qualified or 10 unqualified, on any financial statements, 11 public or private, in your career?</p> <p>12 A. That is correct.</p> <p>13 Q. And we talked earlier about your 14 legal experience. At least as you sit here 15 today you've never tried a lawsuit?</p> <p>16 A. That is correct.</p> <p>17 Q. Have you ever taken a deposition?</p> <p>18 A. I would sit sometimes at 19 depositions. My firm would send me and I 20 would sit there for hours without saying a 21 word.</p> <p>22 Q. Did you ever actually question 23 anybody that you remember?</p> <p>24 A. Substantively in a meaningful way, 25 the way you are doing, no.</p>
<p style="text-align: right;">Page 71</p> <p>1 FUERMAN</p> <p>2 Suffolk University that's to indicate that 3 this is the field of, this is the area that 4 we're studying.</p> <p>5 Q. Were you retained in this case to 6 perform a fraud examination engagement?</p> <p>7 A. No.</p> <p>8 MR. BRAUTIGAM: Objection. This is 9 the third time this question has been 10 asked in almost exactly the same form.</p> <p>11 MR. BURKE: Just trying to get the 12 terms straight.</p> <p>13 Q. Thanks, Mr. Fuerman. I want to ask 14 you, we talked about your C.P.A. license and 15 when you were licensed.</p> <p>16 Have you ever worked for a public 17 accounting firm?</p> <p>18 A. No, I have not.</p> <p>19 Q. Have you ever participated in the 20 audit of financial statements, either public 21 or private?</p> <p>22 A. No.</p> <p>23 Q. Have you ever issued an audit 24 opinion?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 73</p> <p>1 FUERMAN</p> <p>2 Q. Did you ever during the course of 3 your legal career write or prepare public SEC 4 filings?</p> <p>5 A. I did help prepare SEC filings for 6 Cardinal Industries in the sense that when we 7 would do our private placement offerings those 8 would be filed with a Regulation D form. As 9 far as public offerings, I did assist at least 10 once, maybe twice, in a public offering that 11 was done.</p> <p>12 I know one of them was the real 13 estate investment trust. There may have been 14 a limited partnership public offering too. I 15 can't remember at this point.</p> <p>16 Q. Did you actually write those 17 documents or did you just assist with them?</p> <p>18 A. I did some of the writing, other 19 people did some of the writing.</p> <p>20 Q. What was the nature of what you were 21 describing or writing about in those public 22 offerings?</p> <p>23 A. The general nature of the 24 transaction and who are the people at Cardinal 25 Industries and who are the people involved,</p>

<p style="text-align: right;">Page 74</p> <p>1 FUERMAN</p> <p>2 who were the underwriters, who were the 3 accountants. I would review looking for 4 mistakes. I would not generally write 5 anything of a tax opinion because that was 6 handled by an outside law firm.</p> <p>7 But sometimes I would or sometimes 8 I would point out things that were unique or 9 different about this particular transaction 10 that I thought the outside law firm doing the 11 tax opinion ought to know. I would review the 12 projections.</p> <p>13 Q. Is it fair to say that your role was 14 more in the nature of reviewing and 15 commenting, as opposed to actually writing 16 disclosure documents or SEC documents in the 17 first instance?</p> <p>18 MR. BRAUTIGAM: Objection to the 19 form.</p> <p>20 A. By "SEC documents," do you mean 21 private placement offerings or just the public 22 offerings.</p> <p>23 Q. I'm talking about the public 24 offerings.</p> <p>25 A. My experience with public offerings</p>	<p style="text-align: right;">Page 76</p> <p>1 FUERMAN</p> <p>2 of things having to do with the tax opinion.</p> <p>3 Q. Tax opinion on what, on offerings?</p> <p>4 A. Well, we came to one point, and this 5 was not a trivial matter in my view, where the 6 company Cardinal Industries was getting into 7 worse and worse financial condition. And I 8 happen to know from my own knowledge of tax 9 accounting that the current tax opinion, that 10 the boiler plate that had been used in 11 offering after offering after offering was 12 really no longer appropriate and needed to be 13 changed because there was substantial doubt 14 whether Cardinal Industries, by that point, 15 had a positive net worth.</p> <p>16 I felt it was appropriate for me to 17 let tax counsel know this, not be left hanging 18 out to dry. There were some people at 19 Cardinal Industries that were not happy about 20 what I had done, but I felt that was the right 21 thing to do.</p> <p>22 Q. I take it you never worked for an 23 investment banking outfit; is that correct?</p> <p>24 A. That is correct.</p> <p>25 Q. Have you ever been involved in a</p>
<p style="text-align: right;">Page 75</p> <p>1 FUERMAN</p> <p>2 is very limited, if that's what you mean to 3 ask.</p> <p>4 Q. That's what I mean, thank you. Did 5 you ever participate in restatement of 6 financials by any company?</p> <p>7 A. No.</p> <p>8 Q. Did you ever serve in any employment 9 position where you were involved in the 10 compilation or preparation of financial 11 statements on the inside, working as a company 12 employee?</p> <p>13 A. No, but I would help with 14 compilation and preparation of projections for 15 the private placement offerings.</p> <p>16 Q. But in terms of compiling internal 17 financial statements, working as an accountant 18 within a company, you never did that during 19 your job experience?</p> <p>20 A. Well, the work with the projections 21 I regard as accounting related work. I would 22 do that.</p> <p>23 Q. Other than that that's the extent?</p> <p>24 A. And well, I also regarded as 25 accounting related the review and commenting</p>	<p style="text-align: right;">Page 77</p> <p>1 FUERMAN</p> <p>2 merger transaction, either on behalf of the 3 acquiring company or the acquired company?</p> <p>4 A. No.</p> <p>5 Q. Have you ever written a proxy 6 statement?</p> <p>7 A. No.</p> <p>8 Q. Have you ever sat on the board of 9 directors of a private or a public company?</p> <p>10 A. Not a for profit organization, no.</p> <p>11 Q. That's what I'm referring to, for 12 profit. Have you ever sat on the audit 13 committee of a public company?</p> <p>14 A. No.</p> <p>15 Q. Have you ever been retained to 16 advise the board of a public company or the 17 audit committee of a public company?</p> <p>18 A. No.</p> <p>19 Q. Have you ever been hired to perform 20 forensic accounting work, other than the one 21 engagement you talk about earlier?</p> <p>22 A. No. Other than, you know, voicing 23 my opinions based on my background as a 24 certified fraud examiner.</p> <p>25 Q. You've been a certified fraud</p>

<p style="text-align: right;">Page 78</p> <p>1 FUERMAN 2 examiner for five years now roughly? 3 A. That is correct. 4 Q. Have you ever worked in the criminal 5 justice system? 6 A. No. 7 Q. Earlier you talked about articles 8 that you wrote that relate to the area of 9 accountant liability or accountants being 10 named as defendants. You say those are the 11 articles you wrote. Which articles on your 12 resume relate to that topic? 13 MR. BRAUTIGAM: Objection to the 14 form of the question. 15 A. They all relate to that topic. I'm 16 not sure how to respond. 17 Q. Let me just try to rephrase that. 18 The first two pages of your resume there are a 19 series of article publications that you've 20 listed. 21 A. Correct. 22 Q. What is the general topic of these 23 articles? Did these deal with your principal 24 focus on securities litigation and auditors? 25 . MR. BRAUTIGAM: Objection.</p>	<p style="text-align: right;">Page 80</p> <p>1 FUERMAN 2 liability research. It's a very short piece, 3 part of a special issue where I and other 4 professors argued that there should be more 5 debate about some of the issues of auditor 6 liability within accounting academe. 7 Then if you go farther down that 8 page, starting with the articles the C.P.A.'s 9 responsibilities for client-related 10 information, that's an article that talks 11 about the accounting professions code of 12 ethics and what responsibilities the auditor 13 has to keep information of the client 14 confidential in some situations, but disclose 15 it in other situations. 16 It also talks about some lawsuits 17 that are in this area. Then the last two 18 articles are entirely on accountants in 19 litigation, although not exclusively auditors. 20 There might be some discussion in some of 21 those of liability related tax preparation, 22 for example. 23 Then going back to the first page, 24 the first two articles that I cite, the first 25 one being audit quality examined, the second</p>
<p style="text-align: right;">Page 79</p> <p>1 FUERMAN 2 A. Some of them do and some of them do 3 not. 4 Q. Which ones of the ones at the bottom 5 of the first page of your resume, which is 6 Exhibit A to Plaintiffs' Exhibit 115, carrying 7 over to the second page deal with that topic? 8 A. The topic of? 9 Q. Auditor involvement in securities 10 litigation. 11 A. Okay. They all do, but some more 12 than others. 13 Q. Okay. 14 A. I'm trying not to be evasive. Okay, 15 starting with the third article, fraudulent 16 audited annual financial statements, starting 17 with that article and continuing on the next 18 page, most of the next six articles have to do 19 with analyzing, "What are the characteristics 20 associated with auditors being named a 21 defendant or not being named a defendant in a 22 particular private securities class action." 23 One of those is a little difficult. 24 The first article lists, at top of the second 25 page of the resume, balkanized auditor</p>	<p style="text-align: right;">Page 81</p> <p>1 FUERMAN 2 one being accountable accountants, these are 3 both on my new theme which is discussed by 4 Robert Barker in Business Week. 5 Q. What is that team? 6 A. The new theme is I'm developed an 7 evaluation method to measure auditor quality 8 of a particular C.P.A. firm based on their 9 performance in the aggregate over time in a 10 large number of lawsuits. Now those two 11 articles consider not just private securities 12 litigation but also SEC enforcement actions 13 and justice department criminal actions. 14 Q. Is it fair to say that in this case 15 you are not opining on anything dealing with 16 your new theme in terms of evaluating auditor 17 quality? 18 A. No, I am not. And I would emphasize 19 that I am not opining in my articles on anyone 20 individual C.P.A. firm in anyone individual 21 case. I'm opining on their quality in the 22 aggregate. 23 Q. But that particular area of academic 24 focus is not involved at all with the opinions 25 that you are rendering in this case?</p>

<p style="text-align: right;">Page 82</p> <p>1 FUERMAN</p> <p>2 A. That is correct.</p> <p>3 Q. You have not evaluated the</p> <p>4 performance of earns young or any of the other</p> <p>5 auditors in this case?</p> <p>6 A. I have not been asked to give my</p> <p>7 opinion on anything other than materiality and</p> <p>8 restatements and the next sus between them.</p> <p>9 Q. I think this is apparent but just to</p> <p>10 make sure the record is clear, you are not</p> <p>11 opining on anything in this case relating to</p> <p>12 your other area of focus in terms of auditor</p> <p>13 involvement in securities class actions?</p> <p>14 MR. BRAUTIGAM: Objection.</p> <p>15 Q. Do you understand the question?</p> <p>16 A. I'm a little confused.</p> <p>17 Q. Okay. We talked about a couple of</p> <p>18 areas of focus, one of which that has been a</p> <p>19 focus of yours for a long time is what</p> <p>20 indicates whether auditors are or are not</p> <p>21 involved in securities litigation or get</p> <p>22 named, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Are any of the opinions you are</p> <p>25 expressing in this case related to that</p>	<p style="text-align: right;">Page 84</p> <p>1 FUERMAN</p> <p>2 I shouldn't.</p> <p>3 Q. Have you ever been qualified as an</p> <p>4 expert by a court?</p> <p>5 A. No.</p> <p>6 Q. Have you ever been retained as an</p> <p>7 expert?</p> <p>8 A. No.</p> <p>9 MR. BRAUTIGAM: Objection. Other</p> <p>10 than in this case, right?</p> <p>11 MR. BURKE: Yes, and it remains to</p> <p>12 be seen whether he will be qualified or</p> <p>13 anything.</p> <p>14 MR. BRAUTIGAM: But he's been</p> <p>15 engaged.</p> <p>16 MR. BURKE: I understand.</p> <p>17 Q. You have never testified at a</p> <p>18 deposition or trial in any proceeding?</p> <p>19 A. That is correct.</p> <p>20 Q. Have you ever consulted with anybody</p> <p>21 in litigation as an "expert" prior to this</p> <p>22 case?</p> <p>23 A. No.</p> <p>24 Q. Do you know what an "event study"</p> <p>25 is?</p>
<p style="text-align: right;">Page 83</p> <p>1 FUERMAN</p> <p>2 particular area of your academic and</p> <p>3 professional focus?</p> <p>4 A. No, other than in a very trivial</p> <p>5 sense that in the database of my current</p> <p>6 research, which includes about 1,200 lawsuits,</p> <p>7 one of them is Provident and currently I</p> <p>8 believe I've coded Ernst and Young's</p> <p>9 involvement as a one. The involvement of the</p> <p>10 C.P.A. firm ranges from zero to five,</p> <p>11 depending on their involvement. A C.P.A. firm</p> <p>12 that has been named a defendant but appears to</p> <p>13 have gone no further is coded a one.</p> <p>14 Q. But are you testifying in this case</p> <p>15 about anything as it relates to your academic</p> <p>16 focus with respect to Ernst and Young?</p> <p>17 MR. BRAUTIGAM: Objection.</p> <p>18 A. No, I am not. Unless -- well, I</p> <p>19 anticipate that conceivably at this deposition</p> <p>20 somebody will ask me possibly my opinion on</p> <p>21 things that are not strictly related to</p> <p>22 materiality and restatements and the nexus</p> <p>23 between them. Conceivably at this deposition</p> <p>24 if somebody asks me my opinion, then I should</p> <p>25 give it unless there's some legal reason that</p>	<p style="text-align: right;">Page 85</p> <p>1 FUERMAN</p> <p>2 A. Yes.</p> <p>3 Q. Did you perform any kind of an event</p> <p>4 study in this case?</p> <p>5 A. No, I did not.</p> <p>6 Q. Is that something that in the course</p> <p>7 of your academic training you consider</p> <p>8 yourself qualified to perform?</p> <p>9 A. There are different kinds of event</p> <p>10 studies. I should back up. First of all, I</p> <p>11 felt there was no appropriate time to do an</p> <p>12 event study for this case, for my role.</p> <p>13 I didn't feel that was an</p> <p>14 appropriate thing to do. Event studies, I</p> <p>15 have studied event studies in my Ph.D. program</p> <p>16 at Cincinnati. We read many articles on</p> <p>17 different kinds of event studies.</p> <p>18 The most popular genre is "What is</p> <p>19 the relationship between earnings and</p> <p>20 returns." There are many, many studies on</p> <p>21 that topic. I have not published any articles</p> <p>22 in that area. I do not purport to be an</p> <p>23 expert in performing event studies.</p> <p>24 Q. Thank you. With respect to your</p> <p>25 testimony here today, tell me what area of</p>

<p style="text-align: right;">Page 86</p> <p>1 FUERMAN</p> <p>2 your professional expertise is involved in the 3 reports that you've rendered?</p> <p>4 A. I have spent many years studying 5 every conceivable aspect of restatements. I 6 was the first academic to come up with proof 7 of a statistical relationship between 8 restatement of previously issued audited 9 financial statements and the auditor being 10 named as a defendant.</p> <p>11 Almost all my papers since then have 12 been on the topic one way or another of 13 restatements, probably with the exception of 14 the last two papers, the two most recent 15 papers that are listed in my resume.</p> <p>16 Materiality in the context of 17 restatements is very carefully laid out. 18 There's no wiggle room for much difference of 19 opinion in Accounting Principles Board, Option 20 Number 20. The kind of materiality research 21 that is appropriate, that is laid out in 22 Accounting Principles Board, Option Number 20 23 or APB No. 20, I feel very qualified to 24 perform.</p> <p>25 MR. BURKE: Sorry about that.</p>	<p style="text-align: right;">Page 88</p> <p>1 FUERMAN</p> <p>2 to the certified fraud examiner -- the fraud 3 examination field and the auditing field are 4 coming together.</p> <p>5 This is partly a result of the 6 recommendations that are being implemented, 7 issued by the committee on audit effectiveness 8 in the year 2000. They recommended that 9 auditors, financial statement auditors 10 implement more of the kinds of things that are 11 part of the knowledge and training of 12 certified fraud examiners; especially 13 interview and interrogation techniques and 14 statement analysis, which is part of 15 interviewing and interrogation.</p> <p>16 So this is an area where I've 17 studied and, in fact, PricewaterhouseCoopers 18 put on a workshop this summer where a 19 substantial amount of time was spent on that 20 very topic of interview and interrogation and 21 statement analysis and analysis of deception. 22 In fact, the title of it was called "Detection 23 of Deception."</p> <p>24 Q. Even those areas of expertise that 25 you just talked about, restatements,</p>
<p style="text-align: right;">Page 87</p> <p>1 FUERMAN</p> <p>2 Let's go off the record for a moment. 3 (Discussion off the record.)</p> <p>4 Q. I apologize for the interruption, 5 Mr. Fuerman. We talked about your areas of 6 expertise being restatements and materiality 7 in the context of APB 20?</p> <p>8 A. That's correct.</p> <p>9 Q. Any other areas of expertise that 10 you believe are relevant to the opinions that 11 you have rendered in this case?</p> <p>12 A. My general expertise in all of GAAP, 13 generally accepted accounting principles, and 14 GAS, generally accepted auditing standards, 15 from my research and my teaching I think is 16 relevant. I think at times I'd have to go 17 page by page, paragraph by paragraph to 18 identify where that comes in to shape my 19 opinion in the document, but I think it comes 20 in.</p> <p>21 Not as directly as materiality and 22 restatements and APB No. 20, but they do come 23 in. The other thing that comes in is my 24 knowledge and experience in being a certified 25 fraud examiner. I've had -- well, in regard</p>	<p style="text-align: right;">Page 89</p> <p>1 FUERMAN</p> <p>2 materiality, your general expertise in GAAP 3 and GAS and the certified fraud examiner, you 4 have never previously been qualified as an 5 expert in those areas?</p> <p>6 A. By a court of law?</p> <p>7 Q. Yes.</p> <p>8 A. That is correct.</p> <p>9 MR. BRAUTIGAM: Objection, asked and 10 answered.</p> <p>11 Q. Other than what you told me about, 12 are there any other areas of expertise that 13 you brought to bear for purposes of the report 14 that you provided in the case, to testify in 15 this case?</p> <p>16 A. I may have unwittingly brought 17 additional areas of expertise to the table. 18 Looking back at my career, there's so many 19 things I learned in so many different jobs, 20 where it appeared immediately after that job 21 that this knowledge and experience is 22 irrelevant, but then later it became extremely 23 useful.</p> <p>24 It's difficult for me to identify 25 everything that has an impact on these, you</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 FUERMAN</p> <p>2 know, 22 pages. But the bulk of it is focused 3 on materiality, restatements and the nexus 4 between the two. I think that's a fair 5 statement.</p> <p>6 Q. Are you an expert on the federal 7 securities law and disclosures pursuant to 8 them?</p> <p>9 A. No. I have a threshold knowledge 10 but, which I must because I have to teach that 11 topic a little bit in my auditing classes, but 12 I do not purport to be an expert in that.</p> <p>13 Q. Are you an expert in the public 14 securities markets?</p> <p>15 MR. BRAUTIGAM: Objection, over 16 broad.</p> <p>17 A. It's difficult to answer because 18 what is meant by the "public securities 19 markets." I mean I have probably as good a 20 knowledge of some areas of regulation that 21 have an impact on the public securities 22 markets. Maybe things that touch on my 23 research and teaching.</p> <p>24 I keep abreast of the latest new 25 rules governing audit committees that are</p>	<p style="text-align: right;">Page 92</p> <p>1 FUERMAN</p> <p>2 under APB No. 20.</p> <p>3 Q. Have you ever taught financial 4 statement analysis?</p> <p>5 A. No, I have not.</p> <p>6 Q. Have you ever taught any course in 7 public securities markets or securities 8 regulation?</p> <p>9 A. No, I have not, other than the part 10 that is part of my auditing course.</p> <p>11 Q. Have you ever -- I'm sorry.</p> <p>12 A. I'm sorry too. There's also a bit 13 of that in my fraud examination course. We 14 have a chapter where we talk about that.</p> <p>15 Q. Have you ever participated in the 16 preparation of public company 10Ks or 10Qs?</p> <p>17 MR. BRAUTIGAM: Objection, asked and 18 answered.</p> <p>19 Q. I apologize if I did.</p> <p>20 A. I did participate in the preparation 21 of real estate investment trusts public 22 offering at Cardinal Industries. There may 23 also have been a publicly offered real estate 24 limited partnership. I can't remember about 25 that exactly.</p>
<p style="text-align: right;">Page 91</p> <p>1 FUERMAN</p> <p>2 issued by the SEC, the NASDAQ or the New York 3 Stock Exchange, for example, because that's 4 something I'm responsible to know and stay up 5 on.</p> <p>6 Q. Do you hold yourself out as an 7 expert in those areas?</p> <p>8 MR. BRAUTIGAM: Objection.</p> <p>9 A. Yes, I do.</p> <p>10 Q. So are you an expert in stock price 11 behavior?</p> <p>12 A. I am not a capital markets 13 researcher if that's what you mean. There are 14 academics that full-time research the 15 relationship between earnings and returns, for 16 example, or the variability of stock price 17 returns. I don't do that kind of research.</p> <p>18 Q. I take it you've never -- I'm sorry, 19 I didn't mean to interrupt.</p> <p>20 A. Under APB No. 20 the directive is to 21 assume that earnings are important to the 22 public securities markets. That's emphasized 23 heavily in all the financial statement 24 analysis textbooks as very important, and to 25 focus on earnings in studying materiality</p>	<p style="text-align: right;">Page 93</p> <p>1 FUERMAN</p> <p>2 Q. My question is not about public 3 offering documents because we did talk about 4 that. Have you ever participated in the 5 preparation of 10Ks or 10Qs, periodic filings 6 with the SEC on behalf of a public company?</p> <p>7 A. No, I have not.</p> <p>8 Q. Have you ever participated in a 9 securities class action as a plaintiff or 10 defense counsel?</p> <p>11 A. No. At the small law firm in 12 Columbus we had no class actions either, in 13 defense or plaintiff role. They were all 14 direct actions.</p> <p>15 Q. I take it you've never participated 16 in a securities class action as a party on 17 either side?</p> <p>18 MR. BRAUTIGAM: Objection. Do you 19 mean a class member or named class 20 representative?</p> <p>21 MR. BURKE: No, I'm talking 22 plaintiff or defendant.</p> <p>23 A. I from time to time have gotten 24 notices from my broker which happens to be 25 McDonald, a notice of settlement of class</p>

24 (Pages 90 to 93)